

To Fund or Not to Fund? That is the Contractual Interpretation Question: Alderbridge Way GP Ltd. (Re)

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The Supreme Court of British Columbia reaffirmed various principles of contractual interpretation in [*Alderbridge Way GP Ltd. \(Re\)*, 2024 BCSC 1433](#) – a decision which reinforces the importance of a well-drafted loan agreement in commercial transactions.

Background

In November 2019, Romspen Investment Corporation (Romspen) entered into a loan agreement with a group of real property developers, including Alderbridge Way Limited Partnership (the Developers). The purpose of the loan was to provide construction financing for a large project in Richmond, British Columbia, consisting of seven residential and commercial office towers. Romspen was to fund a portion of the \$422 million loan, with the rest to be syndicated (shared) with other lenders on a commercially reasonable efforts basis. This was outlined in the loan agreement through a syndication condition. After several months of trying to syndicate the loan without success, Romspen stopped funding the project on March 31, 2020, relying on the syndication condition.

The Issues & Court Rulings

Issue 1: Was Romspen entitled to terminate its funding of the project? Yes.

The court reaffirmed that all terms agreed upon in writing should be included in the agreement, and discussions or communications during negotiations should not be relied upon. The court also agreed with Romspen that what was said or done during negotiations, including selective reliance on early drafts of the loan agreement, is not admissible as evidence when interpreting the contract's terms – particularly in the presence of a “whole agreement clause” (as was the case in this agreement).

Funding Conditions vs. Defaults

It is important to understand the difference between a condition and a default, and how these provisions affect your rights and obligations under the agreement. Romspen argued it was entitled to stop funding

Cassels

because the Developers failed to meet multiple funding conditions. The Developers claimed Romspen should have provided notice of the failure to meet a particular funding condition and given them an opportunity to fix it. The court disagreed, clarifying that failing to meet a funding condition is not the same as an event of default under the loan agreement. The loan agreement contained no consequence for failing to meet a funding condition other than the cessation of funding, and Romspen was not required to give the Developers time to fix the failure.

Issue 2: Did Romspen make commercially reasonable efforts to syndicate the loan? Yes.

The court found that Romspen's efforts to syndicate the loan were within the range of reasonableness, and expert evidence supported this. The standard of "commercially reasonable efforts" is lower than "best efforts," meaning Romspen was not required to do everything short of the commercially unreasonable to syndicate the loan. Instead, it only needed to do what was reasonable in the circumstances.

Issue 3: Did Romspen owe the Developers a duty of good faith and honesty in the performance of its contractual obligations, specifically in the context of exercising its rights under the syndication condition? No.

The court disagreed with the Developers' claim that Romspen owed a duty of good faith and honest performance in its decision to waive or not waive the syndication condition. The syndication condition was negotiated for Romspen's benefit, and Romspen was entitled to enforce its strict contractual rights against the Developers. The duty of good faith and honest performance does not require Romspen to put the Developers' interests above its own or to waive the syndication condition in circumstances that would be adverse to Romspen's interests.

If you have any questions about this decision or construction loan agreement drafting and interpretation, please do not hesitate to contact the authors or any member of our [Banking & Specialty Finance Group](#).

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